

RECORDED AT REQUEST OF

COAST WOOD PRESERVING, INC.

UKIAH, CALIFORNIA

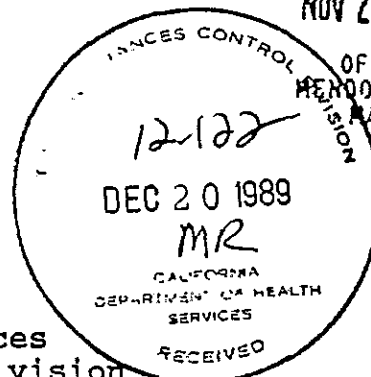
BOOK 1792 PAGE 564

NOV 29 2 56 PM '89

Recording Requested by:
Coast Wood Preserving, Inc.

When Recorded, Mail to:

✓ Department of Health Services
Toxic Substances Control Division
Region 2
2151 Berkeley Way, Annex 7
Berkeley, California 94704
Attention: Howard K. Hatayama, Chief



OFFICIAL RECORDS
HENOOGINO COUNTY CALIF
MARSHA A. YOUNG
RECORDER

45.00

COVENANT AND AGREEMENT

This Covenant and Agreement ("Covenant") is made as of the
25 th day of September, 1989 by Coast Wood Preserving,
Inc., a California Corporation, ("Covenantor") who is the owner
of record of certain Property situated in Ukiah, State of
California, described in Exhibit A, attached hereto and incorpo-
rated herein by this reference ("the Property") and by the
California Department of Health Services, with reference to the
following facts:

- A. This Property has contained and currently contains
hazardous waste.
- B. This Property is the site of a wood preserving plant using
chromated copper arsenate. In the process of using this

1 preservative some of the preservative has been released
2 into the soil on-site. Various governmental agencies have
3 overseen the investigation of the site and currently
4 oversee activities conducted at the site.
5

6 Pursuant to Section 25355.5(a)(1)(B) of the Health and
7 Safety Code, the Department issued a Remedial Action Order
8 Docket No. HSA 88/89-015 on December 16, 1988 to require
9 Coast Wood Preserving, Inc. to implement a Remedial Action
10 Plan (RAP).
11

12 The RAP requires continued extraction and treatment of
13 contaminated groundwater, and complete remediation of
14 contaminated soil upon closure of the Property.
15

16 C. Contamination at the Property
17

18 1. Chromated copper arsenate is a wood preserving
19 compound. Over the years of operation, the cumulative
20 drippings or spillage of the chemical solution has
21 resulted in soil and groundwater contamination.
22

23 2. Soil underlying the Property has been contaminated
24 with chromium, arsenic and copper. Arsenic has been
25 found in soils in concentrations as high as 220 parts
26 per million (ppm), chromium in concentrations as high
27 as 540 ppm and copper in concentrations as high as 230

1 ppm. Generally, concentrations are highest near the
2 retort and sump areas.

3
4 3. Groundwater underlying and adjacent to the Property is
5 contaminated with chromium (VI) and total chromium.
6 Chromium (VI) and total chromium have been found in
7 concentrations as high as 78 ppm.

8
9 D. Health Effects

10
11 ARSENIC (As)

12
13 The principal uses of arsenic and arsenic compounds are in
14 pesticides, cotton desiccants, textiles, glass, alloys and in the
15 manufacture of integrated circuits. Arsenic is well absorbed
16 via the oral, dermal and inhalation routes. Acute ingestion of
17 a high dose of arsenic leads to a burning sensation in the
18 mouth, nausea and vomiting. This is followed by muscular
19 twitches, liver, kidney and heart dysfunctions and by delirium,
20 coma and death. Chronic exposure to arsenic is associated with
21 a persistent metallic taste in the mouth, hyperkeratosis, anemia
22 and peripheral nerve disease. Chronic exposure to arsenic has
23 also been shown to increase the risk of developing skin cancer,
24 aplastic anemia and leukemia.

1 CHROMIUM (Cr)

2
3 Chromium is used in the metal, chemical, tanning, and paint
4 industries. Chromium has two biologically important oxidation
5 states, the trivalent (III) and hexavalent (VI) forms. Chromium
6 (III) is a nutritionally essential trace metal thought to play a
7 role in the metabolism of insulin and the regulation of blood
8 glucose. Chromium (VI) is a corrosive and ulcerogenic agent.
9 Chronic inhalation of chromium (VI) compounds have been
10 associated with the development of lung disease including cancer
11 in humans.

12
13 COPPER (Cu)

14
15 Copper is a nutritionally essential trace element. It is used
16 extensively in a wide variety of industrial processes and salts
17 of copper are also used as algicides and fungicides. Copper is
18 well-adsorbed by the oral route. Acute inhalation of copper
19 fumes or dust can result in a reversible influenza-like
20 syndrome. Chronic ingestion of high levels of copper has been
21 reported to cause hemolysis, fibrosis and cirrhosis of the
22 liver, nervous system damage and kidney dysfunction.

23
24 E. Routes of Exposure and Population at Risk

25
26 There are several water wells within a one-mile radius of
27 the Property. The Russian River is downgradient about half

1 a mile from the Property. Water wells and the Russian
2 River are the primary water supply sources for the Ukiah
3 region.

4
5 Chromium, arsenic and copper present in surface soil may be
6 dispersed and become airborne if the asphalt pavement is
7 not properly maintained. Potential routes of human
8 exposure resulting from wind blown dust are inhalation or
9 ingestion of contaminated particles in the air.

10
11 F. Covenantor desires and intends that in order to protect the
12 present or future public health and safety, the Property
13 shall be used in such a manner as to avoid potential harm
14 to persons or Property which may result from hazardous
15 wastes which have been deposited on the Property.

16
17 ARTICLE I

18 GENERAL PROVISIONS

19
20 1.01 Provisions to Run with the Land. This Covenant sets forth
21 protective provisions, covenants, restrictions and conditions
22 (collectively referred to as "Restrictions"), upon and subject
23 to which the Property and every portion thereof shall be
24 improved, held, used, occupied, leased, sold, hypothecated,
25 encumbered, and/or conveyed. Each and all of the Restrictions
26 shall run with the land, and pass with each and every portion,
27 the Property, and shall apply to and bind the respective

1 successors in interest thereof. Each and all of the Restriction-
2 tions are imposed upon the entire Property unless expressly
3 stated as applicable to a specific portion of the Property.
4 Each and all of the Restrictions are imposed pursuant to Section
5 25222.1 of the Health and Safety Code and run with the land
6 pursuant to Section 25230(a)(1) of the Health and Safety Code.
7 Each and all of the Restrictions are for the benefit of and
8 enforceable by the Department.
9

10 1.02 Concurrence of Owners Presumed. All purchasers, lessees,
11 or possessors of any portion of the Property shall be deemed by
12 their purchase, leasing, or possession of such Property to be in
13 accord with the foregoing and to agree for and among themselves,
14 their heirs, successors, and assignees, and the agents,
15 employees, and lessees of such owners, heirs, successors, and
16 assignees that the Restrictions as herein established must be
17 adhered to for the benefit of future Owners and Occupants and
18 that their interest in the Property shall be subject to the
19 Restrictions contained herein.
20

21 1.03 Incorporation into Deeds and Leases. Covenantor desires
22 and covenants that the Restrictions set out herein shall be
23 incorporated in, and this Covenant and Agreement shall be
24 attached to, each and all deeds and leases of any portion of the
25 Property.
26
27

ARTICLE II
DEFINITIONS

2.01 Department. "Department" shall mean the California State Department of Health Services and shall include its successor agencies, if any.

2.02 Improvements. "Improvements" shall mean all buildings, roads, driveways, and paved parking areas, constructed or placed upon any portion of the Property.

2.03 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property.

2.04 Owner. "Owner" shall mean the Covenantor or its successors in interest, including heirs and assigns, who hold title to all or any portion of the Property.

2.05 Director. "Director" shall mean the Director of the California Department of Health Services, or his or her designee.

ARTICLE III

DEVELOPMENT, USE AND CONVEYANCE OF THE PROPERTY

3.01 Restrictions on Use. Covenantor promises to restrict the use of the Property, as described in Exhibit A, as follows:

(1) No owner or occupant of the Property shall act in any manner that will aggravate or contribute to the existing contamination at the Property or interfere with the implementation of any remedial action at the Property.

(2) All owners and occupants of the Property or any portion thereof shall maintain an asphalt or concrete cap over the Property until such time as the soil remediation has begun in accordance with the approved RAP and Remedial Design (RD).

(3) In the event of any proposed earth movement or excavation by Owner or Occupant upon the Property, or any portion thereof, the Owner or Occupant of said Property shall notify and receive approval from the Director of such proposed activity 30 days prior to the beginning of such earth movement or excavation activities and shall:

(A) Comply with any applicable requirements of the California Occupational Health and Safety Agency, the Mendocino County Air Pollution Control District, the North Coast Regional Water Quality Control Board, the

1 United States Environmental Protection Agency, and the
2 Department of Health Services;
3

4 (B) Utilize appropriate procedures to control dust during
5 the period of earth movement or excavation;
6

7 (C) Handle all materials excavated on the premises as
8 hazardous wastes unless shown otherwise by sampling
9 and testing pursuant to the hazardous waste criteria
10 set forth in Division 4, Chapter 30, Title 22,
11 California Code of Regulations; and
12

13 (D) Protect any stockpiled hazardous waste from wind,
14 rain, and any other condition which may cause the
15 dispersal of any such hazardous waste.
16

17 In the event of an emergency any owner or occupant of the
18 Property within twenty-four (24) hours of such an emergency may
19 request permission from the Department by telephone for any
20 proposed earth movement or excavation. The Department shall
21 either approve or deny any such request within one business
22 working day of receipt of such a request. A written report
23 shall be submitted within five days of the Department's
24 approval. The report shall include a description of emergency
25 and its cause, period of time the proposed activity, and steps
26 taken to eliminate the emergency.
27

1 (4) No owner or occupant of the Property shall disturb the
2 interim asphalt and concrete cover, slurry wall, the function of
3 any portion of the groundwater extraction and treatment system
4 or monitoring system, or surface water run-off control other
5 than routine maintenance in accordance with approved RAP and RD.
6

7 (5) Any or all wastes must be managed in accordance with all
8 applicable requirements.
9

10 (6) No production wells shall be drilled without the express
11 prior written approval of the Director and any other agency with
12 jurisdiction. Monitoring or other test wells are not subject to
13 this provision. .
14

15 (7) Without the express prior written approval of the Director
16 no construction or placement of a building or structure shall
17 occur on the Property which is intended for use as any of the
18 following, nor shall any new use of an existing structure or
19 building on the premises occur as any of the following:
20

- 21 (A) A hospital;
- 22 (B) A school for persons under 21 years of age;
- 23 (C) A day-care center;
- 24 (D) Any permanently occupied human habitation other
25 than those used for industrial purposes.
26
27

1 3.02 Conveyance of Property. Any prospective purchaser,
2 lessee, or assignee of the Property or of an interest in the
3 Property must demonstrate to the satisfaction of the Department
4 that said purchaser, lessee or assignee of the Property is
5 financially capable of implementing the selected remedial action
6 for the Property. The Owner or Owners shall provide thirty (30)
7 days advance notice to the Department of any sale, lease, or
8 other conveyance of the Property or an interest in the Property
9 to a third person. The Owner(s) shall provide information of
10 intended use for the Property by subsequent owner to the extent
11 the existing owner(s) have such information.

12
13 3.03 Enforcement. Failure of the Owner to comply with any of
14 the requirements, as set forth in paragraph 3.01 above, shall be
15 grounds for the Department, by reason of the Covenant, to
16 require that the Owner or Occupants modify or remove any Improve-
17 ments constructed in violation of the paragraph. This Covenant
18 shall be enforceable by the Department pursuant to Section 25236
19 of the Health and Safety Code.

20
21 3.04 Notice in Agreement. All Owners and Occupants shall
22 execute a written instrument which shall accompany all purchase,
23 lease, sublease, or rental agreements relating to the Property.
24 The instrument shall contain the following statement:

25
26 The land described herein contains hazardous waste. Such
27 condition renders the land and the owner, lessee, or other

1 B. Any significant diminution of the ability to mitigate
2 any significant potential or actual hazard to public
3 health.

4
5 C. Any long-term increase in the number of humans or
6 animals exposed to significant hazards which affect
7 the health, well-being, or safety of the public.
8

9 Upon making a decision to approve or deny the proposed variance,
10 the Director shall issue and cause to be served the decision and
11 findings of fact on the owner of the land, the legislative body
12 of the city or county in whose jurisdiction the land is located,
13 and upon any other interested persons. If the Department agrees
14 to the proposed variance, the director and all of the owners of
15 the land shall execute an instrument reflecting this agreement,
16 shall particularly describe the real property affected by the
17 variance, and the owner shall record the instrument in the
18 county in which the land is located within ten (10) days of the
19 date of execution.
20

21 4.02 Termination. Any Owner or, with the Owner's consent, an
22 Occupant of the Property or a portion thereof may apply to the
23 Department for a termination of the Restrictions as they apply
24 to all or any portion of the Property on the ground that the
25 waste no longer creates a significant existing or potential
26 hazard to present or future public health or safety. Any
27

1 application shall contain sufficient evidence for the Department
2 to make a finding upon any or all of the following grounds:
3

4 A. The hazardous waste which caused the land to be
5 contaminated has since been removed or altered in a
6 manner which precludes any significant existing or
7 potential hazard to present or future public health.
8

9 B. New scientific evidence is available concerning either
10 of the following:
11

- 12 1. The nature of the hazardous waste contamination;
13 or
14 2. The geology or other physical environmental
15 characteristics of the contaminated land.
16

17 Upon making a decision to approve or deny the proposed
18 termination, the Director shall issue and cause to be served the
19 decision and findings of fact on the owners of the land, the
20 legislative body, and the city or county in whose jurisdiction
21 the land is located, and upon any other interested person. If
22 the Department approves, in writing, the proposed termination of
23 the Restrictions, the Director and all of the owners of the land
24 shall record or cause to be recorded, a termination of the
25 Restrictions which shall particularly describe the real property
26 subject to the Restrictions and which shall be indexed by the
27 recorder in the grantor index in the name of the record title

1 owner of the real property subject to the Restrictions, and in
2 the grantee index in the name of the Department.

3
4 4.03 Term. Unless terminated in accordance with paragraph 4.02
5 above, by law or otherwise, this Covenant shall continue in
6 effect in perpetuity.

7
8 ARTICLE V

9 MISCELLANEOUS

10
11 5.01 No Dedication Intended. Nothing set forth herein shall be
12 construed to be a gift or dedication, or offer of a gift or
13 dedication, of the Property or any portion thereof to the
14 general public or for any purposes whatsoever.

15
16 5.02 Notices. Whenever any person gives or serves any notice,
17 demand, or other communication with respect to this Covenant,
18 each such notice, demand, or other communication shall be in
19 writing and shall be deemed effective 1) when delivered, if
20 personally delivered to the person being served or to an officer
21 of a corporate party being served or official of a government
22 agency being served, or 2) three (3) business days after deposit
23 in the mail if mailed by United States mail, postage paid
24 certified, return receipt requested:

1 To: Harold Logsdon
2 Coast Wood Preserving, Inc.
3 P.O. Box 673
4 Ukiah, CA 95482
5

6 Copy To: Department of Health Services
7 Toxic Substances Control Division
8 Region 2
9 2151 Berkeley Way, Annex 7
10 Berkeley, CA 94704
11 Attention: Regional Section Chief
12

13 5.03 Partial Invalidity. If any portion of the Restriction set
14 forth herein or terms is determined to be invalid for any
15 reason, the remaining portion shall remain in full force and
16 effect as if such portion had not been included herein.
17

18 5.04 Article Headings. Headings at the beginning of each
19 numbered article of this Covenant are solely for the convenience
20 of the parties and are not a part of the Covenant.
21

22 5.05 Recordation. This instrument shall be executed by
23 the Covenantor, and by the Director, California Department
24 of Health Services. This instrument shall be recorded by
25 the Owners in the County of Mendocino within ten (10) days
26 of the date of execution.
27

1 5.06 References. All references to Code sections include
2 successor provisions.
3

4 IN WITNESS WHEREOF, the parties execute this Covenant as of the
5 data set forth above.
6

7 COAST WOOD PRESERVING, INC.
8

9 By: Harold W. Logsdon
10 Harold W. Logsdon

11 Title: President
12

13 Date: Sept. 25th 1989
14

15
16 DEPARTMENT OF HEALTH SERVICES
17

18 By: Howard K. Hatayama
19 Howard K. Hatayama

20 Title: Reg Administrator, TSCP
21

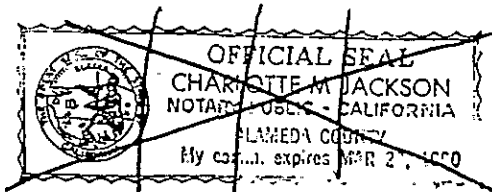
22 Date: 10/3/89
23
24
25
26
27

1 STATE OF CALIFORNIA)

2)
3 COUNTY OF ALAMEDA)

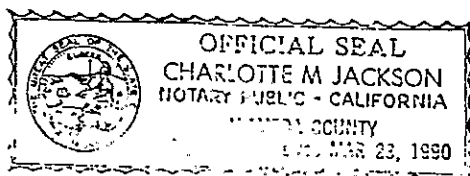
4
5
6
7 On Oct. 3, 1989, before me, the undersigned,
8 a Notary Public in and for said state, personally appeared
9 Howard K. Hatayama, personally known to me or proved to me on
10 the basis of satisfactory evidence to be the person who executed
11 the within instrument as Regional Administrator, Region 2, Toxic
12 Substances Control Program, Department of Health Services, of
13 the agency that executed the within instrument, and acknowledged
14 to me that such agency executed the same.

15
16 WITNESS my hand and official seal.



Charlotte M. Jackson

Notary Public in and for said
County and State



1 STATE OF CALIFORNIA)

2)
3 COUNTY OF STANISLAUS)
4
5
6

7 On Sept 25, 1989, before me, the undersigned,
8 a Notary Public in and for said state, personally appeared
9 Harold Logsdon, personally known to me or proved to me on the
10 basis of satisfactory evidence to be the person who executed the
11 within instrument as President of the corporation that executed
12 the within instrument, and acknowledged to me that such corpora-
13 tion executed the same pursuant to its bylaws or a resolution of
14 its board of directors.
15

16 WITNESS my hand and official seal.
17
18

19 Alicia Isley
20 Notary Public in and for said
21 County and State
22

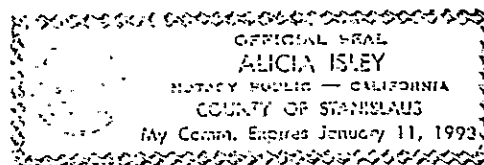


EXHIBIT A

The description of the two lots are as follows:

BEGINNING at the point of intersection of the South line of Lot 70 of the Yokayo Rancho, with the East line of Parcel One, as conveyed in the deed executed by Edgar W. Dutton et al. to State of California, dated November 29, 1961, recorded February 1, 1962, in Volume 588 of Official Records, page 142, Mendocino County Records; thence along the exterior boundary of said Parcel One, North 5 degrees 52' 45" West 342.86 feet; thence continuing North 5 degrees 52' 45" West 145.0 feet; thence North 80 degrees 37' 15" East 386.91 feet to the South line of the 50 foot road described in the deed to City of Ukiah, recorded June 8, 1956 in Volume 432 of Official Records, page 543, Mendocino County Records; thence along the South line of said road Easterly to the West line of Parcel Two as conveyed in said deed (588 O.R.142); thence along said West line of Parcel Two South 7 degrees 20' 46" East 354.23 feet to the said South line of Lot 70; thence Westerly along said South line to the point of beginning.

PARCEL 2, as numbered and designated on the Parcel Map filed April 24, 1974 in Map Case 2, Drawer 23, Page 89, Mendocino County Records.